

Claims 5 to 11 are rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-13 Of US 6,200,348 (Biedermann). This document is a member of the same patent family as the EP 977 528 cited in the present specification.

In the US 6,200,348, a spacer is disclosed wherein a second member (2) is slidably guided within a first member (1). The total length of the spacer is set **manual sliding**. After adjustment, the length of the spacer is fixed by screwing a tool (23) or a locking screw (27) into the first member (1). The tool (23) or locking screw (27) has a ball (25, 28), and the second member (2) has a ratchet notch formed of a row of ball segment shaped indentations (18). The ball (25, 28) engages with one of the indentations (18), thus fixing the set length of the spacer.

In the present invention, however, the length of the spacer is adjusted by a cooperation of a toothed profile (22) with a toothed wheel (24) engaging into the toothed profile (22). The toothed profile (22) is provided on the second member (2) **in addition** to the row of indentations (18), and the toothed wheel (24) is provided on the first member (1). The toothed wheel does not engage into the row of indentations or recesses (18), but into the **toothed** profile (22). Turning the toothed wheel (24) moves the toothed profile (22), thus changing the total length of the spacer. After adjustment, the length of the spacer is fixed in the same way as in the US 6,200,348 by screwing a locking screw (27) with a ball (28) into the first member (1) (see description page 3, last section, to page 6, first section, and Fig. 1 and 4).

In the US 6,200,348 there is **not even a hint of a suggestion** for adjusting the length of a spacer with a device that transforms a rotary movement acting from outside into a linear movement displacing the parts relative to each other. There also is no hint for using a toothed wheel provided on one of the two members and a toothed profile provided on the other member.

Moreover, neither the toothed profile (22) nor the toothed wheel (24) are included in any of the claims 1 to 13 of the US 6,200,348.

Thus, present claims are not obvious from the claims of US 6,200,348.

Claims 5-11 also are rejected under 35 U.S.C. §103(a) over Biedermann et al. (US 6,200,348). The present claims are patentable over Biedermann et al. for the reasons discussed hereinabove. That is, Biedermann et al. '348 *fails* to teach or suggest using a toothed wheel provided on one of the two members and a toothed profile provided on the other member.

The examiner asserts that Biedermann et al. '348 is prior art under 35 U.S.C. §102(e). However, because the two of the inventors are the same and the third inventor also was under obligation to assign the present invention to Biedermann Motech GmbH at the time the invention was made, 35 U.S.C. §102(c) provides that the Biedermann et al. '348 reference does not preclude patentability. Thus, Biedermann et al. '348 is not prior art. 103(c)?

Claims 5, 6, 8 and 10 are rejected under 35 U.S.C. §103(a) over Schär et al. (US 6,176,881).

In Schär, a vertebral prosthesis is disclosed which comprises two members, one slidably guided within the other. The inner member has a toothed profile. After manually adjusting the length, a spring element having mating tooth is latched onto the inner member, thus fixing the manually set length.

Thus, Schär also *fails* to teach or suggest a device that transforms a rotary movement acting from outside into a linear movement displacing the parts. There also is not even a hint of a suggestion for a toothed wheel provided on one of the two members and a toothed profile provided on the other member.

Therefore, it is not seen how the present invention would have been obvious to one of ordinary skill in the art in view of Schär.

Claims 7, 9 and 11 are rejected under 35 U.S.C. §103(a) over Schär in view of Saggar (US 5,702,455). Claims 7, 9 and 11 are patentable for at least the same reasons as discussed above. Saggar ***fails*** to make up for the deficiencies of Schär. Saggar also ***fails*** to teach or suggest a device that transforms a rotary movement acting from outside into a linear movement displacing the parts or, particularly, a toothed wheel provided on one of the two members and a toothed profile provided on the other member.

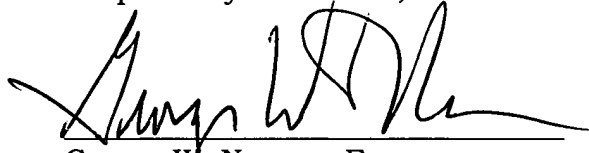
Therefore, it is not seen how the present invention would have been obvious to one of ordinary skill in the art in view of any combination of Schär and Saggar.

In view of the discussion above, it is respectfully submitted that the present application is in condition for allowance. An early reconsideration and notice of allowance are earnestly solicited.

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Respectfully submitted,



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